

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,) 3:19-CR-112-K-1
Government,)
)
VS.) DALLAS, TEXAS
)
)
CENGIZ JAN COMU,)
Defendant.) January 18, 2023

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE ED KINKEADE
UNITED STATES DISTRICT JUDGE

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24 Proceedings reported by mechanical stenography and
25 transcript produced by computer.

1 SENTENCING HEARING - JANUARY 18, 2023

2 P R O C E E D I N G S

3 THE COURT: Okay. All right. We're going to do Comu
4 first.

5 Case of United States of America versus Cengiz Jan
6 Comu -- it may be Jan -- Cause Number 3:19-CR-112-K.

7 Mr. Fenton, Mr. Kneller, Ms. Mary Walters are all --
8 well, y'all are back. You're here today.

9 MR. FENTON: We are, Your Honor. Good morning.

10 THE COURT: You've made Mr. Kneller and Ms. Walters
11 do the others. I'm glad you came today.

12 MR. FENTON: Thank you, Your Honor. It's good to see
13 you.

14 THE COURT: Good to have you.

15 Ms. Walters, are you sick?

16 MS. WALTERS: Yes. I have a cold. I've tested
17 negative for COVID twice, but I'm just trying to be thoughtful
18 of others.

19 THE COURT: Okay. All right. Well, I'm glad that
20 you are, but if I can't hear you as you muddle through -- Okay.
21 Now I can hear you. If I can't, I'll tell you, okay?

22 MS. WALTERS: Thank you, Judge.

23 THE COURT: But I don't want you to get sick or get
24 us sick.

25 MS. WALTERS: Right.

1 THE COURT: And then I've got Mr. Hagood. Good to
2 see you again, sir.

3 MR. HAGOOD: Good morning, Your Honor.

4 THE COURT: And, Ms. Hunt?

5 MS. HUNT: Yes, Your Honor.

6 THE COURT: How are you?

7 MS. HUNT: I'm doing well. How about you?

8 THE COURT: Good.

9 And I'm assuming that you and Mr. Poe are the -- let
10 me think through this. Y'all are the book lawyers on this
11 matter, not that Mr. Hagood doesn't know how to look it up. I
12 just know him as a trial lawyer. So did I guess that right?

13 MS. HUNT: I would say so, Your Honor.

14 THE COURT: Okay. Good. All right.

15 Well, y'all -- and I see Mr. Comu over there. Good
16 to see you, sir.

17 THE DEFENDANT: Good morning.

18 THE COURT: All right. Okay. Thank y'all.

19 Okay. Why don't you come up here for just a minute
20 with him, and I'll go through the prelims with him.

21 Okay. Mr. Comu, on March 10, 2020, you pled guilty
22 before United States Magistrate Judge Renee Toliver to Counts
23 One through Twenty-Three of a 23-count superseding indictment
24 that was filed on November 6, 2019.

25 Count One, you pled guilty to conspiracy to commit

1 mail and wire fraud; Counts Two through Eleven, mail fraud; and
2 Counts Twelve through Twenty-One, wire fraud, in violation
3 of -- excuse me -- and then Counts Twenty-Two and Twenty-Three
4 you pled guilty to money laundering and aiding and abetting.

5 There's no plea agreement.

6 I accepted your guilty plea on March 25, 2020.

7 And as part of the plea today I will dismiss the
8 original indictment, because we're proceeding on the
9 superseding indictment; isn't that correct?

10 MR. FENTON: Yes, Your Honor.

11 THE COURT: Okay. Good.

12 All right. So we've got the guidelines on offense --
13 it will be an offense level 43, criminal history category I.

14 So it's -- Counts One through Twenty-Three would put
15 it at 5,280 months. And the statute, of course, is zero to 20
16 on Counts One through Twenty-One; and Counts Twenty-Two and
17 Twenty-Three, zero to ten.

18 And the supervised release range is one to three.

19 The fine range is \$50,000.00 to \$24,854,623.22.

20 Restitution in this case --

21 Have y'all agreed to restitution, Mr. Hagood?

22 MR. HAGOOD: No, sir.

23 THE COURT: No, you have not?

24 MR. HAGOOD: (Indicating in the negative)

25 THE COURT: Okay. But the amount that's being sought

1 is \$12,427,311.61.

2 There are a number of objections that you've made,
3 Mr. Hagood. I do have those. And you can go over them
4 individually. You can pick out certain ones. You can stand on
5 what you've already filed. That's up to you. And I'm ready to
6 hear that.

7 And when we finish that, I then want you to go
8 into -- I've got both your sentencing memoranda, a number of
9 supportive letters that I already have. And I've been through
10 your sentencing memoranda. And I think I've been through all
11 the letters. There may be some that have come in that I
12 haven't seen.

13 And I don't think the Government has any objection to
14 the presentence report, or do you? No?

15 MR. FENTON: No, Your Honor.

16 THE COURT: Okay. All right. So that's kind of
17 where we are.

18 I've already sentenced co-defendants Mr. Kadish,
19 Mr. Green, and Ms. Gagnier. And so that's where we are today.
20 And I'm glad for you to go over those objections at this time.

21 Yeah, here's the supportive letters. Okay. Thank
22 you.

23 MR. HAGOOD: Judge, how would you like to handle the
24 objections, one at a time or --

25 THE COURT: You can -- I'm going to let you decide

1 how you'd like to do it, and that will be fine with me. I'm
2 not that picky about it.

3 If you'll pull that microphone over, though, so the
4 court reporter can hear you. This -- unfortunately, this
5 courtroom is not very conducive to being able to hear unless
6 you're talking right into that microphone.

7 MR. HAGOOD: Yes, sir.

8 I'm going to have Ms. Hunt address the objections,
9 Judge.

10 THE COURT: Oh, that's fine. Great.

11 Ms. Hunt, how long have you been with Mr. Hagood?

12 MS. HUNT: For about seven years, Your Honor.

13 THE COURT: Is that right? Did you go right out of
14 school?

15 MS. HUNT: Yes, Your Honor. Well, while I was in
16 school even.

17 THE COURT: You were working for him while you were
18 in school and then went to -- stayed there all this time?

19 MS. HUNT: Yes, Your Honor.

20 THE COURT: Did you go to SMU?

21 MS. HUNT: I did.

22 THE COURT: Well, good. Well, good to have you.
23 Go ahead.

24 MS. HUNT: So first with the loss amount, Your Honor,
25 we would submit that --

1 THE COURT: Pull that microphone around.

2 MS. HUNT: Is that better?

3 THE COURT: It's much better. But you don't -- I
4 don't think you have to lean down.

5 MS. HUNT: Okay.

6 THE COURT: You just have to have it in front of you.

7 MS. HUNT: So the Government's calculation determined
8 that the loss amount comes in at \$12,427,311.61. We would
9 submit for basically three key reasons, Your Honor, that the
10 more correct loss amount would be \$9,255,239.46 based on three
11 categories of adjustments that we believe need to be made.

12 So the first, Your Honor, if you review the most
13 recent, the second addendum to the PSR, they list a figure that
14 they refer to as the actual loss, and then they include a
15 description of the victims' statements and comments that were
16 submitted in response to Probation's inquiry of the victims.
17 And for a number of them, the amount stated by the victim is
18 lower, some cases substantially lower, than the amount listed
19 as the actual loss.

20 So we have totalled the difference between those
21 amounts, Your Honor, as the first category of adjustment that
22 we submit needs to be made.

23 And then there are two loans, Your Honor, which
24 throughout much of the evidence have been clearly identified as
25 loans but which the Government takes a position were

1 investments.

2 One of the loans was made by Ward Capital and one by
3 Sam Rose. And as early, Your Honor, as the forfeiture
4 affidavit, the agent investigating this case identified that
5 that amount of funds, \$2.67 million total as loans, described
6 then as such, identified both those parties as lenders to
7 EarthWater, not -- and separated them out.

8 And then also, Your Honor, in the materials submitted
9 by Ward Capital to the Probation Office, they discuss it in
10 terms of the loans. And also in the PSR addendum the notes
11 reflecting, I guess, those materials also discuss these amounts
12 as loans.

13 So we would submit that those amounts should be
14 removed from the total loss.

15 And then finally, Your Honor, also referenced in the
16 submission by Ward Capital they've outlined a number of
17 payments that were made towards those loans, for a total amount
18 of \$293,597.22, which we would submit also should be subtracted
19 from the total loss amount.

20 So with those three adjustments, Your Honor, you
21 arrive at 9.255, which, of course, would drop down to the next
22 category, according to the guidelines, for a plus-18 rather
23 than a plus-20.

24 And, Your Honor, in order to help illustrate that, we
25 have prepared a brief spreadsheet, and we have a copy of the

1 submission by Ward Capital. We would offer those as Exhibits
2 16 and 17 if Your Honor --

3 THE COURT: Have you given those to the Government?

4 MS. HUNT: We have. We provided a copy of all our
5 exhibits to the Government.

6 THE COURT: Okay. So they have all of them?

7 MS. HUNT: Yes, Your Honor.

8 THE COURT: And this is 18? What's the exhibit
9 number?

10 MS. HUNT: Defendant's 16 and 17, Your Honor.

11 THE COURT: Okay. I'm sorry. 16 and 17.

12 Do you have any objection to those being admitted for
13 the hearing?

14 MR. FENTON: No, Your Honor.

15 THE COURT: All right. They're admitted.

16 (Defendant's Exhibit Nos. 16 and 17 received)

17 THE COURT: Okay.

18 MS. HUNT: May I approach, Your Honor?

19 THE COURT: Sure. Just give them to Ronnie.

20 Thank you, Ronnie.

21 Okay. Could you -- this is really pretty large
22 print. If you could have made it smaller --

23 MS. HUNT: I apologize, Your Honor.

24 THE COURT: -- I could have gotten an electron
25 microscope up here to read this, but --

1 MS. HUNT: It is quite small.

2 THE COURT: I'm kidding. I'm giving you a hard time.
3 I've got new glasses, so I'm okay.

4 Okay. On that one issue -- you're finished on that
5 one issue?

6 MS. HUNT: Yes, Your Honor.

7 THE COURT: Let me let the Government address that
8 one objection.

9 MR. FENTON: Yes, Your Honor.

10 So on loss, the loss amount was calculated very
11 simply, basically took --

12 THE COURT: Okay. Is that microphone on?

13 MR. FENTON: Sorry, Your Honor. Is this better? Can
14 you hear me now?

15 THE COURT: I don't know if it's better or not. I
16 don't think so.

17 There we go.

18 MR. FENTON: Okay. So we calculated the loss very
19 simply. We just aggregate -- we looked at the bank records for
20 the Earthwater account. We identified all of the checks that
21 came into that account from investors. We also identified all
22 wires that came in from investors.

23 To the extent -- that is it. That is the loss. That
24 is a very simple, straightforward, reliable calculation. It's
25 based on bank records.

1 The first category that Defendant argues should
2 reduce the loss amount is based on a discrepancy between what
3 the victims remember today and the amount of money that they
4 sent in years ago.

5 The Defendant shouldn't benefit from that discrepancy
6 particularly where a number of these victims were elderly
7 individuals who today just don't have the recollection that
8 they may have years ago.

9 The bank records control. They trump.

10 The second category for the reduction are these loans
11 that were purportedly made.

12 Loans is shorthand sometimes for convertible debt
13 securities. These are just other forms of securities. It's
14 debt that is convertible into equity. And that is exactly what
15 ward purchased here.

16 And we provided to Your Honor in Exhibit 9 along with
17 our submission a copy of the documents, the agreements signed
18 by Mr. Comu, clearly understood the terms of those agreements,
19 explaining that while they are loans in some sense, the
20 value -- that investment value that's derived is from the
21 conversion of debt to equity.

22 That conversion to equity was -- essentially, the
23 attractiveness is based on Mr. Comu's promise that the company
24 would go public. That, of course, could never happen, because,
25 as he's admitted, they were lying about how they were using

1 investor funds.

2 The third category is just the payments that ward
3 Capital made that were received from Earthwater on the loan.

4 The point here really is that ward Capital is
5 fraudulently induced into entering into the convertible debt
6 security based on the lies that the Defendant had told them.
7 So that should be included as a loss. That is not separable.
8 You can't separate that out from the -- from the amount that
9 they paid for the convertible debt.

10 THE COURT: Okay. Go to the next one.

11 MS. HUNT: May I respond very briefly, Your Honor?

12 THE COURT: Sure.

13 MS. HUNT: I would just note we -- we understand that
14 the Government asserts that they calculated the loss amount via
15 the bank records, but if you look at the amounts calculated in
16 the various iterations of the PSR, that amount fluctuates quite
17 significantly, which doesn't -- seems inconsistent with the
18 idea that it's all based on the bank records, which haven't
19 changed since 2019.

20 In the original PSR, the loss amount was calculated
21 at 10.9 million. Then by August of '20, in the addendum it was
22 up to 11.3. And then most recently, January 13th, it was up to
23 12.4. So that is one other aspect of our discrepancy with the
24 loss amount, is that --

25 THE COURT: Let me stop you.

1 why did it go up, Government?

2 MR. FENTON: Yes, Your Honor.

3 As the Government continued its investigation and
4 aggregated the bank records and went through that process, the
5 number grew.

6 THE COURT: As what, now?

7 MR. FENTON: As the Government went through and
8 tabulated the losses, including the convertible debt securities
9 from Ward Capital and, you know, other information that we
10 found in the bank records, the number increased over time.

11 THE COURT: I mean, the bank records didn't change,
12 did they?

13 MR. FENTON: No, but the work that was being done
14 with the bank records. We continued to work on the records.

15 The exhibit that we provided to the Court is just
16 based -- it's based on the bank records.

17 THE COURT: What, did you find more bank records?

18 MR. FENTON: We went through and continued to work
19 through those bank records.

20 THE COURT: Okay. That -- work through?

21 MR. FENTON: So we had to consult --

22 THE COURT: I won't say what that sounds like, but in
23 the news days, it sounds like what I'm hearing on some of the
24 national news about somebody trying to find things.

25 But, anyway, work through isn't an answer. I need an

1 answer.

2 MR. FENTON: So, Your Honor, we -- the Government
3 hired a consultant to look at the bank records and add up all
4 the checks and add up all the wires. And part of what we did
5 as part of that process was try to identify who the investors
6 were, sometimes based on what was indicated in the wire
7 confirmations or in the check subject lines, the memos, or
8 sometimes we would go back and find the actual stock purchase
9 agreements that would confirm that these individuals were
10 indeed people who had purchased stock and tie the check to
11 that. So that was a process that took some time.

12 THE COURT: So when you were at 10, there was a group
13 out there you missed?

14 MR. FENTON: There were some that were not included.
15 And in addition to that, we also --

16 THE COURT: why?

17 MR. FENTON: The Ward Capital --

18 THE COURT: I mean, why weren't they?

19 MR. FENTON: Because we were -- as I said, we
20 were going through --

21 THE COURT: I can understand the Ward Capital, but is
22 that -- does that take the whole \$2 million? Does that get it
23 from 10 to 12?

24 MR. FENTON: That -- well, it's \$1.5 million.

25 THE COURT: Okay. That takes care of 1.5 --

1 MR. FENTON: Yes.

2 THE COURT: -- of that discrepancy? Okay.

3 MR. FENTON: See, that's a large -- that's --
4 that's --

5 THE COURT: A large portion?

6 MR. FENTON: That's a large part of it. And then the
7 rest of it was just at that time not yet confirmed, and we were
8 taking our time and looking at stock purchase agreements and
9 other --

10 THE COURT: Going through what?

11 MR. FENTON: Going through the bank records. And
12 where we had a check from an individual and we wanted to
13 confirm that that individual was an investor, we would go back
14 and find the stock purchase agreement and confirm it.

15 THE COURT: Okay. I'm not sure -- I mean -- I mean,
16 I don't know why you couldn't get it the first round. I don't
17 get why you didn't -- everything except the -- what was the
18 name of that other lender?

19 MR. FENTON: Ward Capital.

20 THE COURT: Other than Ward Capital, why didn't you
21 catch it all the first round?

22 MR. FENTON: Ward Capital indeed accounts for the
23 largest delta. That's the --

24 THE COURT: I get that, but what about the rest of
25 it?

1 MR. FENTON: They were just not yet confirmed. We
2 were going through the confirmation process.

3 THE COURT: You mean you didn't have their names, or
4 you found a check and you couldn't tell who had written it
5 or --

6 MR. FENTON: Exactly, Your Honor.

7 Maybe we had found a check and we had a name, and we
8 didn't know -- it didn't say on the check if that individual
9 had -- if -- that it was for a stock purchase, so we would go
10 and find the stock purchase agreement that corresponded with
11 that check.

12 THE COURT: Okay.

13 MR. FENTON: That accounted for a small amount.

14 THE COURT: Okay. Okay. Anything else on that?

15 MS. HUNT: No, Your Honor.

16 THE COURT: All right. Next one?

17 How many of these are there? 18?

18 MS. HUNT: There are 16 objections, but I am not
19 planning to go through all of them, Your Honor.

20 THE COURT: It's okay if you need to, Ms. Hunt. I'm
21 not fussing at you. I just want to make sure I've got it all
22 down here.

23 All right. Next?

24 MS. HUNT: So next, Your Honor, we would have the
25 substantial financial hardship enhancement. And on that we

1 would submit that the Government hasn't met its burden to
2 submit enough proof to establish that all of these victims
3 actually had a substantial financial hardship.

4 The main method that they used in order to make these
5 determinations was they sent out sort of a worksheet to the
6 victims and had them fill it out, but it essentially amounts,
7 Your Honor, to a checklist where it line items out the various
8 ways that you could qualify for a substantial financial
9 hardship and allows them to check the box of whether they
10 believe that they did suffer that circumstance.

11 THE COURT: What's -- where's the line?

12 MR. FENTON: There's not a dollar amount, Your Honor,
13 but they --

14 THE COURT: No. What makes you a sophisticated
15 investor that you wouldn't fit in this category of it being a
16 substantial hardship, you know? Only rich people? I mean, is
17 there -- what's your standard?

18 Obviously some of these people had a financial
19 hardship. Agreed? Some of them?

20 MR. FENTON: Agreed. Certainly, Your Honor.

21 THE COURT: Okay. So where's the cutoff?

22 MR. FENTON: Maybe perhaps to give an example I think
23 might answer your question, Your Honor.

24 There are a number -- about 14 or so victims who had
25 a \$5,000.00 loss or less who indicated that they suffered a

1 substantial financial hardship. And in response to the
2 Government's inquiry, they simply checked the box but provided
3 no additional information.

4 One of them, Your Honor, had a loss of \$1,244.05 and
5 checked the box that he had substantial changes to his living
6 arrangements as a result of that loss.

7 THE COURT: How much do you think is in this category
8 that it shouldn't be?

9 MS. HUNT: I would certainly say --

10 THE COURT: I mean, you haven't calculated that?

11 MS. HUNT: I have not made that calculation, Your
12 Honor.

13 THE COURT: You're just saying the Government didn't
14 prove it, so they can't get any of it?

15 MS. HUNT: Well, they didn't provide enough evidence
16 even really to evaluate the legitimacy of these claims.

17 THE COURT: So what would they need to do? Have a
18 financial statement on everybody and then look and see how it
19 affected them and go through that kind of analysis?

20 MS. HUNT: If perhaps even a net worth of the
21 individual, Your Honor. That might give at least a standard to
22 measure it against to determine if that was substantial,
23 because obviously the amount that's substantial changes
24 depending on the individual's circumstances. But without any
25 information to sort of backstop these assertions when they're

1 just plain like that, it's difficult to evaluate.

2 THE COURT: I get it.

3 Okay. Government?

4 MR. FENTON: Yes, Your Honor.

5 The process that was relied upon here was
6 Probation's -- the materials that were mailed out by Probation
7 to the individuals, Victim Assistance, where they respond under
8 oath as to how this impacted them. So we're relying upon the
9 under-oath statements of the victims.

10 with respect to the amount -- and 72 victims
11 responded. So there are far, far -- that number is far in
12 excess of 25 that's required for this enhancement to apply.

13 THE COURT: How much was the enhancement? Two
14 levels? Three levels?

15 MR. FENTON: It's -- it's a six-level enhancement.

16 THE COURT: Six level?

17 MR. FENTON: Twenty-five or more victims. And then
18 there are other levels for five or more.

19 THE COURT: Okay.

20 MR. FENTON: There was a large number of victims.

21 THE COURT: Okay. I understand that. All right.

22 MR. FENTON: The one additional point I just wanted
23 to make was Ms. Hunt is really focusing on the \$5,000.00 and
24 arguing, well, how can \$5,000.00 really matter to these
25 individuals?

1 I just want to point out to Your Honor, the \$5,000.00
2 mattered to Mr. Comu because a large number of these investors
3 invested \$5,000.00. And Mr. Comu and his co-conspirators spent
4 substantial time trying to convince these individuals to part
5 with that \$5,000.00.

6 So to now argue that the \$5,000.00 is but a mere
7 pittance is kind of ironic in that context. It clearly
8 mattered to these individuals, and we take them for their word
9 that it harmed them substantially.

10 THE COURT: I get it.

11 Okay. All right. Go ahead. Next?

12 MS. HUNT: Your Honor, the enhancement for a
13 violation of a prior judicial order, there are two orders at
14 issue. One is an SEC order. And on that one, Your Honor, we
15 would submit that if you read the text of the order itself, it
16 limits the application of the order to, quote, for purposes of
17 this action only.

18 And it also -- when it defines in the body of the
19 order what is being prohibited, it again refers to the
20 specifics of that case, Your Honor. For example, it discusses
21 obtaining money or property by means of any untrue statement of
22 a material fact concerning but not limited to the quality of
23 the investment being sold, specifically including the yield of
24 gold or other minerals to be found.

25 So both at the outset where it specifically limits

1 its application to that action only and further confirms that
2 in the body, we would submit, Your Honor, that that order has a
3 very limited applicability and that it applied to that
4 proceeding and that investment.

5 with respect to the Wisconsin order, Your Honor, we
6 would frankly submit that Comu didn't do anything to violate
7 that order.

8 There was only one victim who was identified as being
9 from Wisconsin, Your Honor. And a review of the notes about
10 that victim shows that it was two of Mr. Comu's co-defendants,
11 Filippo and Price, who actually sold the investment to that
12 individual and interacted with him.

13 So in that regard, Your Honor, we would just submit
14 that Comu did not take any action which would be violative of
15 the Wisconsin order.

16 THE COURT: Okay. Government?

17 MR. FENTON: Yes, Your Honor.

18 The Court had already found that Mr. Comu violated
19 the terms of the SEC order back when the Court considered
20 Mr. Comu's appeal of the revocation of bond. And we think that
21 the Court's decision at that time was correct. The plain
22 language of the order and the stated purpose of the order was
23 to prohibit Mr. Comu from ever selling unregistered securities
24 again.

25 And the example that Ms. Hunt cites is one type of

1 misrepresentation that he is prohibited from making in the
2 future. But if you look at the language of the order, it
3 clearly applies to any security in the form of investment
4 contracts or any other security, and also applies to the
5 purchase and sale of investment contracts or any other
6 security. And that phraseology is used repeatedly throughout.

7 So the Government contends that that clearly
8 prohibits -- it's a broad prohibition that is limitless in time
9 and that was something that Mr. Comu actually negotiated at
10 that time as a way to avoid other sanctions from the SEC.

11 THE COURT: Okay. Next?

12 MS. HUNT: Sophisticated means, Your Honor.

13 On this one, we would submit that the fraud at issue
14 is simply very straightforward. They lied about the amount of
15 commissions that would be paid to the salespeople out of the
16 investment amounts and obviously said it would be no more than
17 10 percent when really it was up to 50 percent at times.

18 There's nothing sophisticated about that, Your Honor.
19 It's just simply lying to the investors.

20 The idea that Regus was somehow a shell corporation
21 designed to shield the true nature of the scheme also, Your
22 Honor, is simply not the case here. In the PPM, Regus was
23 explicitly cited and referenced, and they disclosed not only
24 the ownership interest of Mr. Comu and one of his co-defendants
25 in Regus but also clearly laid out that Regus was entitled to

1 an annual advisory fee.

2 so certainly it can't be said that that was any type
3 of clandestine operation, hidden, or, you know, otherwise
4 disguising the true nature of the parties.

5 And finally, Your Honor, the fact that Kadish had, I
6 believe, a sales operation located in Florida was really of no
7 consequence to the scheme overall. It did not facilitate, you
8 know, any of the investors not being able to reach Earthwater
9 or anything of that nature. It simply happened to be where he
10 was located. It certainly wasn't anything that Mr. Comu sought
11 out and didn't honestly, Your Honor, have any real bearing on
12 the scheme overall.

13 So, Your Honor, we would submit that none of those
14 examples that are cited in the PSR are sufficient to warrant
15 the application of sophisticated means.

16 THE COURT: Okay.

17 Yes, sir. Government?

18 MR. FENTON: Thank you, Your Honor.

19 Ms. Hunt's disagreement here is really with the
20 Sentencing Guidelines itself. The comment in the guidelines
21 says that sophisticated means is usually indicated where you
22 have a telemarketing scheme --

23 THE COURT: Make sure you -- I just can barely hear
24 you.

25 MR. FENTON: Oh, I'm sorry, Your Honor.

1 Sophisticated means -- the comments to the Sentencing
2 Guidelines indicate that sophisticated means generally applies
3 where there's a telemarketing scheme where the main office of
4 the scheme is located in one jurisdiction and soliciting
5 operations are located in other -- in another jurisdiction and
6 where there is conduct such as hiding assets or transactions or
7 the use of fictitious entities, corporate shells, offshore
8 financial accounts. And that is exactly what happened here.

9 with the exception of the offshore financial
10 accounts, we have all of those facts -- facts basically in
11 this -- in this case.

12 THE COURT: I understand that argument. Thank you.

13 MR. FENTON: We would argue that it applies.

14 THE COURT: I understand. Thank you.

15 Next, Ms. Hunt?

16 MS. HUNT: A violation of securities law, Your Honor.

17 Mr. Comu did not occupy any of the roles outlined in
18 that enhancement. He was not an officer, director of a
19 publicly traded company, not a registered broker/dealer, and
20 not an investment advisor.

21 So for that reason, Your Honor, we would submit the
22 enhancement --

23 THE COURT: What was he?

24 MS. HUNT: A CEO and president of a not publicly
25 traded company, Your Honor.

1 THE COURT: Okay.

2 MS. HUNT: And also something that the PSR really
3 doesn't discuss was the fact that Earthwater was selling its
4 securities pursuant to the exemption under Rule 506 for
5 accredited investors.

6 So the idea that there could be a securities law
7 violation for selling unregistered securities unlawfully
8 wouldn't apply here because there would have to be a
9 requirement that the securities were registered, and here they
10 were being offered pursuant to an exemption.

11 So for those reasons, Your Honor --

12 THE COURT: And the exemption is they were accredited
13 investors?

14 MS. HUNT: Yes, Your Honor.

15 THE COURT: What makes them an accredited investor?

16 MS. HUNT: They each certified that they were an
17 accredited investor and signed, you know, a stock purchase
18 agreement to that effect.

19 THE COURT: Okay. I know what they signed, but what
20 is the requirement? You've got to have X amount of dollars?

21 MS. HUNT: A net worth of over \$1 million, I believe,
22 Your Honor, or be able to withstand a loss of the entire
23 investment. There are several different criteria. I don't
24 recall them all, Your Honor, but --

25 THE COURT: Okay. But you've got to -- you've got to

1 have a certain amount, don't you? A certain amount of money to
2 be able to be an accredited investor?

3 MS. HUNT: That is certainly one way to qualify, Your
4 Honor.

5 THE COURT: But you can qualify without having -- I
6 could have no money and I could still qualify?

7 MS. HUNT: I believe, Your Honor, if you had enough
8 money to withstand a complete loss of the investment. It
9 doesn't set out a specific benchmark in that situation. One
10 way would be if you have a net worth of \$1 million or more, but
11 another way, based on my understanding, would be if you could
12 bear a complete loss of the investment without suffering
13 significant financial hardship.

14 THE COURT: And they all signed those, saying they
15 were?

16 MS. HUNT: Yes, Your Honor.

17 THE COURT: Okay. All right. Next?
18 Do you want to address that?

19 MR. FENTON: Just briefly, Your Honor.

20 On the accredited investors claim, I think it's
21 important to point out that the way that the Defendant uses
22 this is wrong as a matter of law. And the reason why is
23 because there is a requirement under the applicable regulations
24 that the person who is selling the stock verify that they take
25 steps to confirm. And here, that was not done. And the

1 Government would posit that that was because that was not an
2 actual attempt to verify. It's basically a way to excuse
3 blame.

4 And in addition to that, it's just willful blindness.
5 They're just blinding themselves to the fact that these
6 individuals who are making \$5,000.00 investments clearly are
7 not sophisticated investors. They are not accredited --
8 accredited investors.

9 THE COURT: I mean, you could be a sophisticated
10 investor and just say, "I'll put \$5,000.00 in this thing," but
11 it would be pretty rare.

12 But the thing that you're saying is, it's on the
13 person selling to verify?

14 MR. FENTON: Yes, Your Honor.

15 THE COURT: Okay. Hey, Ronnie, can you turn that
16 microphone up?

17 THE CLERK: Yes, sir.

18 THE COURT: Go ahead, Ms. Hunt.

19 MS. HUNT: Thank you, Your Honor.

20 Moving on to the next one, Your Honor, vulnerable
21 victims.

22 So as we discussed extensively in our briefing, Your
23 Honor, the case law is clear that a victim is not vulnerable
24 merely by virtue of being over a certain age. It requires an
25 additional vulnerability beyond simply having hit a certain

1 age, Your Honor. But really that's all the evidence that the
2 Government has put forward to justify this enhancement, Your
3 Honor.

4 There's not -- there's not been a showing, for
5 instance, that the Defendants targeted an assisted living
6 facility or a memory care center to where they would be
7 specifically seeking out especially vulnerable people even
8 beyond the age limit as the statute contemplates or the
9 guideline contemplates.

10 Also, Your Honor, Mr. Comu obviously was -- had a
11 very different role than the salesmen who were the ones really
12 responsible for coming up with these leads, contacting the
13 leads, determining who and how they would contact them. So he
14 really didn't have visibility over the sources of where the
15 salesmen were getting the leads and that type of thing. So he
16 didn't have the same visibility over the characteristics of the
17 victims as they did.

18 And, Your Honor, I think it's also worth noting that
19 even when the Government was trying to determine how many of
20 these victims were over a certain age, it took them years-long
21 investigation to come up with a good amount of the ages. But
22 still, Your Honor, I believe they've not been able to determine
23 the ages of all the victims, which I would submit is evidence
24 that they weren't being targeted on that basis if -- even with
25 access to all the discovery in this case, it required

1 additional investigation to determine.

2 THE COURT: Okay. I understand that argument.
3 Government?

4 MR. FENTON: Thank you, Your Honor.

5 There are two independent bases for the vulnerable
6 victim enhancement adjustment. One, it has never been
7 addressed by the defense, and that is the fact that they are
8 reloading these victims. They are identifying victims who have
9 proven susceptible to the fraud and revictimizing them over and
10 over and over again. That --

11 THE COURT: Is there a number that it has to be to be
12 to have -- to get this added to the guidelines, like 25 or 30
13 or 50 people, or no? I don't know. The vulnerable victim.

14 MR. FENTON: No, Your Honor.

15 THE COURT: It can be one?

16 MR. FENTON: Yes, Your Honor.

17 THE COURT: Okay. All right.

18 MR. FENTON: Here, though, we've identified at least
19 124 victims who were reloaded 200 -- a total of 292 times on
20 top of their initial investment. This was characteristic of
21 the scheme. It's why it was so successful for Mr. Comu and his
22 co-conspirators.

23 In addition to that, the second bases is the fact
24 that these individuals -- a lot of the individuals who were
25 targeted were elderly. And here we would point to the fact

1 that the entire company, the investment opportunity was -- was
2 presented, was marketed as this kind of fountain of youth; this
3 idea that if you drink this, it can get better.

4 And one of the things that was done here by Mr. Comu
5 and his co-conspirators was to actually send product out as a
6 prop to get the victims to invest again.

7 So we would argue that for either -- either one of
8 those bases the vulnerable victim adjustment is appropriate.

9 THE COURT: Okay. Go ahead.

10 MS. HUNT: Obstruction of justice, Your Honor.

11 This issue in particular has been very extensively
12 briefed, so I won't repeat all of that, but --

13 THE COURT: All right.

14 MS. HUNT: -- the key point, Your Honor, in our
15 perspective is that none of the conduct discussed in any of the
16 briefing constituted threatening, intimidating, or unlawfully
17 influencing a co-defendant, witness, or juror, or certainly did
18 not constitute destroying or concealing any evidence in this
19 case. So --

20 THE COURT: I understand that argument.

21 Government?

22 MR. FENTON: Your Honor, again, there's two
23 independent bases for the application of this adjustment, one
24 of which is the fact that the Defendant has repeatedly lied to
25 the Court and also to Magistrate Judge Rebecca Rutherford

1 throughout the course of these proceedings.

2 The second bases is everything that he did to violate
3 his conditions of release and tried to hide that from the
4 Government and the Court. The reason why that is obstruction
5 of justice is because the goal was basically to convince the
6 victims who would -- some of whom would have probably testified
7 at trial that they were indeed not victimized, that they got
8 something of value for parting with their money. And that's
9 why the Government contends that it's obstruction of justice.
10 It's essentially a form of witness tampering.

11 THE COURT: Okay. All right. Next?

12 MS. HUNT: Last one, Your Honor, acceptance of
13 responsibility.

14 we would submit that by pleading guilty to all 23
15 counts of the superseding indictment in a timely manner,
16 admitting to the conduct as laid out in the factual resume, and
17 also, Your Honor, he did additionally resign voluntarily from
18 the office of CEO/president that he formerly held at
19 Earthwater, he has achieved or satisfied the basic elements or
20 factors set out in 3E1.1 in order to qualify for an acceptance
21 reduction, we would submit, Your Honor.

22 THE COURT: well, why doesn't he lose it because of
23 his actions on pretrial release?

24 MS. HUNT: Your Honor, we would take the position
25 that those actions didn't constitute obstruction of justice.

1 THE COURT: We shouldn't have revoked him?

2 MS. HUNT: We certainly had a different view of the
3 facts, Your Honor.

4 THE COURT: Oh, man.

5 MS. HUNT: We would never --

6 THE COURT: That's a good answer. That's a very good
7 answer. Okay.

8 All right. The Government? I think the Government
9 has already responded.

10 MR. FENTON: Yes, Your Honor. We stand on our
11 submission.

12 THE COURT: Okay. I pretty much already ruled on
13 that one.

14 All right. I'm going to rule on those in a little
15 bit, but give me whatever you have in addition to the letters
16 and your -- your memorandum, sentencing memorandum, everything
17 that you have.

18 You will agree to your list under this Defendant's
19 Exhibit 16, that list of restitution of \$9,255.239.46 and every
20 one of those people in there, correct?

21 MS. HUNT: Yes, Your Honor.

22 THE COURT: You agree to that, Mr. Comu?

23 You agree that you owe that in addition to everybody
24 else that's in the conspiracy with you that -- you've been over
25 that sheet that lists that \$9 million that your lawyer has

1 submitted to me, correct?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Okay. All right. So he at least owes
4 that much restitution, correct?

5 MS. HUNT: Yes, Your Honor.

6 THE COURT: All right. I get it.

7 Okay. So I'm ready to hear everything else that you
8 have in mitigation in the way of testimony.

9 I have got these letters. I do have those. Let me
10 make sure.

11 (Pause)

12 THE COURT: One is from Mr. Skelton. I even have a
13 picture of Mr. Skelton. And one from [REDACTED]. Oh, no,
14 this is -- this is a negative letter. I'm sorry.

15 And then I've got this -- that was a letter on the
16 other side.

17 Okay. Then I've got these letters that y'all have
18 put in here from various people, a whole bunch of them, being
19 supportive.

20 (Pause)

21 THE COURT: Okay. All right. I'm ready to hear
22 anything else you have in mitigation.

23 (Discussion off the record between counsel)

24 MS. HUNT: No other --

25 THE COURT: What, now?

1 MR. HAGOOD: I asked Ms. Hunt if there were any other
2 objections to raise to the Court. She said no.

3 THE COURT: Okay. I will rule on those in a little
4 bit.

5 MR. HAGOOD: Yes, sir.

6 THE COURT: Okay.

7 MR. HAGOOD: So we have a couple of witnesses, Judge,
8 if it pleases the Court.

9 THE COURT: That would be great. If -- let me --
10 Mr. Comu, if you will go back to where you were
11 seated over there.

12 I'm ready to hear your witnesses that you have.

13 MR. HAGOOD: I do. We'll call Dr. Chirase.

14 (Pause)

15 THE COURT: Mr. Hagood, do you want him to get on the
16 witness stand, or do you just want to question them right
17 there? That's up to you.

18 MR. HAGOOD: If it please the Court, this is fine, if
19 that's all right with the Court.

20 THE COURT: Sure. It's great for me.

21 MR. HAGOOD: Thank you, Judge.

22 Go right up here, sir.

23 THE WITNESS: Okay.

24 THE COURT: Let's get you sworn in, sir.

25 (The witness was sworn)

1 THE COURT: And you are Mr. --

2 THE WITNESS: Norbert Chirase.

3 THE COURT: Norbert Chirase?

4 THE WITNESS: Yes.

5 THE COURT: Okay.

6 NORBERT CHIRASE, DEFENDANT'S WITNESS, SWORN

7 DIRECT EXAMINATION

8 BY MR. HAGOOD:

9 Q. Do you have any professional titles?

10 A. Yes. I have a Ph.D. in nutrition, so I'm Dr. Chirase.

11 Q. Will you tell Judge, Doctor, your educational background
12 which qualifies you as a Ph.D.?

13 A. Yes. I have a first degree in biology from Portland State
14 University and a master --

15 THE COURT: From where? What state?

16 THE WITNESS: Portland State.

17 THE COURT: Portland State?

18 THE WITNESS: Yeah. In Portland, Oregon.

19 THE COURT: You bet.

20 THE WITNESS: And a master's degree in animal science
21 from Washington State.

22 THE COURT: Okay.

23 THE WITNESS: Which is in Pullman.

24 THE COURT: Yes, sir.

25 THE WITNESS: And a Ph.D. in nutrition from Texas A&M

1 University in College Station.

2 THE COURT: Okay.

3 BY MR. HAGOOD:

4 Q. Is Exhibit 1 your resume?

5 A. Yes.

6 MR. HAGOOD: Judge, we have given a copy to the
7 prosecutor.

8 THE COURT: And you offer that into evidence?

9 MR. HAGOOD: I do.

10 THE COURT: And you have no objection?

11 MR. FENTON: No objection.

12 THE COURT: That's admitted into evidence.

13 (Defendant's Exhibit No. 1 received)

14 MR. HAGOOD: Thank you, Judge.

15 THE COURT: Thank you.

16 BY MR. HAGOOD:

17 Q. Doctor, do you know C.J. Comu?

18 A. Yes.

19 Q. And did you -- do you have a company in Amarillo that sold
20 product to Mr. Comu's company Earthwater?

21 A. Yes.

22 Q. Tell the Judge what your -- the name of your company and
23 what product you sold to Earthwater, please.

24 A. Well, the name of my company is GTX Technologies. I
25 founded the company in 2007 to extract minerals and use them to

1 supplement food and water and --

2 Q. And why is minerals important in the humans' diet?

3 A. Well, I did some research with beef cattle at feedlots,
4 and we found that very often when animals are under stress,
5 they lose a lot of essential minerals. And even when they eat,
6 they could not obtain enough minerals to be able to meet their
7 bodily function. And so they need -- there was the need to
8 supplement essential minerals.

9 So I came across this product, and I fed it to
10 animals, and I saw some responses. They went back to feed.
11 And I found that this was very helpful not only for animals but
12 eventually for humans.

13 Q. This product you sell, what is it, sir?

14 A. It is called fulvic and humic acid.

15 Q. Let me stop you. Will you spell it for the court
16 reporter, fulvic?

17 A. Yeah, fulvic, F-U-L-V-I-C.

18 Q. And the other -- and the other one?

19 A. And then -- and the other compound is H-U-M-I-C.

20 Q. And these aren't regulated by the FDA, the Food and Drug
21 Administration, correct?

22 A. No. These are regulated by USDA.

23 Q. And you've had a USDA certification?

24 A. Yes, I do.

25 Q. And is Exhibit 2 and 3 illustrative of that notion?

1 A. Yes.

2 MR. HAGOOD: We've given 2 and 3 to the Government.
3 We offer 2 and 3.

4 THE COURT: And no objections?

5 MR. FENTON: No objection, Your Honor.

6 THE COURT: They're both admitted into evidence.

7 (Defendant's Exhibit Nos. 2 and 3 received)

8 MR. HAGOOD: Thank you, Judge.

9 THE COURT: Thank you.

10 BY MR. HAGOOD:

11 Q. USDA has certified your laboratory; is that correct?

12 A. Well, they certified the products, and these are extracted
13 without chemicals, so they go under organic certification.

14 Q. I see. So you extract minerals from an organic
15 substance --

16 A. Yes.

17 Q. -- and then sell that product to companies like Earthwater
18 and other companies?

19 A. Yes.

20 Q. Is that correct?

21 A. Yes. That's correct.

22 Q. And just for demonstrative purposes -- I won't offer them,
23 but I'm holding in my hand an Earthwater bottle of Black water.
24 Why is this black?

25 A. Well, it is black because one of the compounds, the humic

1 acid, is a molecule and it contains a lot of carbon.

2 THE COURT: A lot of what?

3 THE WITNESS: A lot of carbon.

4 MR. HAGOOD: Carbon.

5 THE COURT: Carbon?

6 THE WITNESS: The element carbon, yes.

7 A. And so the more carbon there is, the darker it becomes.

8 Now, the other compound contains the fulvic acid,
9 which is a smaller molecule. And it has a golden color simply
10 because the concentration is not as high as this particular
11 one.

12 Q. So the dark one, is this the humic acid?

13 A. Yes, that's the humic acid.

14 Q. And then the ZenFul bottle that Earthwater sold, that's
15 from the fulvic --

16 A. The fulvic -- that's from the fulvic acid.

17 Q. And you sell a syrup to Earthwater?

18 A. Yes.

19 Q. Inject it into water, and then sell it as a product to the
20 public?

21 A. Yes.

22 Q. And did I ask you to calculate how much product you sold
23 to Earthwater over the years that you did business with them?

24 A. Yes.

25 Q. Did you start doing business with Earthwater in 2014 and

1 you stopped in '19 when EarthWater was shut down by the search
2 warrant?

3 A. Yes.

4 Q. And does Exhibit 6 show the increase in sales over the
5 years?

6 A. Yes, sir.

7 MR. HAGOOD: We would offer Exhibit 6, Judge.

8 THE COURT: Okay.

9 MR. FENTON: No objection.

10 THE COURT: Defendant's 6 is admitted into evidence.

11 (Defendant's Exhibit No. 6 received)

12 BY MR. HAGOOD:

13 Q. Now, Doctor, Exhibit 6 -- I think you told me that each
14 bottle of EarthWater costs about 7 cents of humic acid or
15 fulvic acid; is that correct?

16 A. Yes, sir.

17 Q. And if you divided 7 cents into \$173,760.00, which is the
18 total amount of product you sold to EarthWater over the four or
19 five years you did business with them, how many bottles does
20 that come to?

21 A. It's close to 2 million. 2.5 million bottles.

22 Q. You calculated it yesterday?

23 A. Yes.

24 Q. Simply divide 07 into that number, into 173, you get over
25 2 million bottles?

1 A. Yes, you get over 2 million bottles.

2 Q. Does Exhibit 6 show that each year your sales to
3 EarthWater increased?

4 A. Yes.

5 Q. Except in '19 when the -- May of '19, early May of '19,
6 when the company was shut down?

7 A. Yes, sir.

8 Q. All right. And, finally, you export your product to other
9 countries around the world?

10 A. Certainly, yes, I do.

11 Q. What other countries?

12 A. Japan, Canada, of course, Mexico, the UK, some to
13 Switzerland and a few other countries, for example, Egypt.

14 Q. All right. And did you, in fact, receive an award from
15 the Secretary of Commerce for your area of exporting your
16 product around the world?

17 A. Yes, sir.

18 And it is the President award. The award was -- the
19 President could not present the award, so the Secretary of
20 Commerce was actually there to do it in place of the President.

21 Q. The President at the time was President Trump?

22 A. Yeah, President Trump.

23 Q. And does Exhibit 4 show a press release from the Commerce
24 Department and Exhibit 5 showing you and your wife receiving
25 that award?

1 A. Yes.

2 MR. HAGOOD: We would offer 4 and 5, Judge.

3 MR. FENTON: No objection.

4 THE COURT: 4 and 5, Defendant's exhibits, are
5 admitted into evidence.

6 (Defendant's Exhibit Nos. 4 and 5 received)

7 BY MR. HAGOOD:

8 Q. The lady in 4, who was that lady?

9 A. Who?

10 Q. The lady with Secretary Ross and yourself, who's the lady?

11 A. Oh, yeah. That's my wife, my late wife.

12 Q. Has she passed?

13 A. Yeah. She passed away in 2019.

14 MR. HAGOOD: That's all we have, Judge.

15 THE COURT: I want to ask a couple of questions.

16 MR. HAGOOD: Yes, sir.

17 THE COURT: When you said you fed these to animals,
18 do you have the study, the results of the study you did and the
19 results and how they, you know, improved? Do you have that
20 study?

21 THE WITNESS: Yeah.

22 THE COURT: And what kind of animals did you feed it
23 to? Wild animals? Domesticated animals?

24 THE WITNESS: Well, my area was beef cattle, and this
25 was critical because we have a lot of cattle that are

1 transported to the Texas Panhandle into the feed lots, and they
2 are usually exposed to stress and diseases.

3 THE COURT: Okay.

4 THE WITNESS: And then not only did I feed that to
5 cattle, but I fed that to baby pigs, pregnant pigs, and
6 growing, you know, pigs as well.

7 THE COURT: Do you have a result of those studies
8 showing how the pigs gained weight and the cows gained weight
9 and their blood was better or whatever? Is there some study I
10 can look at?

11 THE WITNESS: Yes. Yes, sir.

12 THE COURT: Okay. You just don't have it today? But
13 you did do studies?

14 THE WITNESS: Yes, we did observe some responses.

15 THE COURT: Okay. All right.

16 THE WITNESS: Yes.

17 THE COURT: The Government, questions?

18 MR. FENTON: No, Your Honor.

19 THE COURT: All right. Thank you, Mr. Chirase.
20 Sorry about your wife.

21 THE WITNESS: Thank you, Your Honor.

22 MR. HAGOOD: Thank you. Go ahead and have a seat.

23 (Pause)

24 MR. HAGOOD: Call Brian Shields, Judge, if it pleases
25 you.

1 THE COURT: Sure.

2 MR. HAGOOD: Thank you.

3 (The witness was sworn)

4 BRIAN SHIELDS, DEFENDANT'S WITNESS, SWORN

5 DIRECT EXAMINATION

6 BY MR. HAGOOD:

7 Q. Will you tell the Court your name, please?

8 A. Robert Brian Shields.

9 Q. What do you do for a living, sir?

10 A. I'm an attorney, sir.

11 Q. And I'm going to just jump right to it. In June of --

12 THE COURT: Pull the microphone up.

13 BY MR. HAGOOD:

14 Q. In June of 2019, you and your uncle named Jim Shields --
15 he's a lawyer; is that correct?

16 A. Correct.

17 Q. Your uncle Jim Shields wanted to put together a group to
18 buy Earthwater and keep it alive because you knew it had a lot
19 of product. It was on pallets in warehouses. And it was being
20 sold on Amazon. And you felt that you could -- if you could
21 gain control of Earthwater, you could at least have a shot at
22 keeping the company alive and making money for investors; is
23 that true?

24 A. That's correct.

25 Q. Did you -- did your uncle Jim Shields put together a

1 group, with the assistance of the great Mike Gibson, contact
2 the Department of Justice to seek approval to try to keep
3 Earthwater alive?

4 A. That's correct, except we didn't have the group finally
5 formed, but we had -- we tested the market, and we felt very
6 confident that we would be able to put together a group of
7 investors.

8 Q. And then on or about June 24th or 23rd of 2019, about a
9 month after Earthwater had been shut down by the Government,
10 did you participate in a phone call to Mr. Fenton?

11 A. Yes.

12 Q. And did -- did the notion of trying to keep Earthwater
13 alive, was that pitched to Mr. Fenton?

14 A. Yes.

15 Q. And essentially were you advised that if you do this you
16 could be co-conspirators? He didn't know what your position
17 was with them, and maybe Earthwater could be a co-conspirator?
18 Was that the response you got?

19 A. Yes.

20 Q. Did it have a chilling response, or was it a response that
21 said, "Yeah, we're going to move forward with this endeavor and
22 try to save Earthwater"?

23 A. It immediately killed the deal.

24 Q. And the next day did your uncle send Mr. Fenton an email
25 that's Exhibit 7 telling him that he was not going to move

1 forward with the idea of trying to save Earthwater?

2 A. That's correct.

3 MR. HAGOOD: We'll offer 7, Judge.

4 THE COURT: All right. Any objection to that,
5 Mr. Fenton?

6 MR. FENTON: No, Your Honor.

7 (Defendant's Exhibit No. 7 received)

8 THE COURT: All right.

9 BY MR. HAGOOD:

10 Q. If Mr. Fenton said, "Look, I take no position on this,"
11 would you have moved forward?

12 A. Yes.

13 MR. HAGOOD: That's all I've got, Judge.

14 THE COURT: Do you have any questions, Mr. Fenton?

15 MR. FENTON: No, Your Honor.

16 THE COURT: Okay. Thank you, sir.

17 THE WITNESS: Thank you, Judge.

18 (Pause)

19 MR. HAGOOD: Judge, we would also offer -- I believe
20 it's in the sentencing memorandum, but we also offer the sworn
21 declaration of Stephen Lloyd and the sworn declaration of John
22 Skelton.

23 The upshot of Mr. Lloyd is he's known Mr. Comu for
24 years. Mr. Lloyd has a very successful business, which applies
25 marble to commercial structures. And he says in his

1 declaration he would offer Mr. Comu a job to help him make
2 restitution. That's how much confidence he has in him.

3 Mr. Skelton has written letters to the Court but also
4 was an investor.

5 Both Mr. Lloyd and Mr. Skelton were investors. They
6 knew they could lose money. Mr. Skelton invested \$50,000.00.
7 Mr. Lloyd invested 10.

8 They all signed subscription agreements. They all
9 knew they could lose their money.

10 And they are here to support Mr. Comu, Your Honor.

11 THE COURT: And you offer those?

12 MR. HAGOOD: I do, Your Honor.

13 THE COURT: Objection?

14 MR. FENTON: No objection.

15 THE COURT: Then 8 and 9 -- is that what those were?

16 MS. HUNT: Yes.

17 MR. HAGOOD: I think so.

18 MS. HUNT: Yes.

19 THE COURT: I think it was 8 and 9.

20 MR. HAGOOD: Yes, Judge.

21 THE COURT: 8 and 9, they are admitted into evidence.

22 (Defendant's Exhibit Nos. 8 and 9 received)

23 THE COURT: Okay. what else?

24 MR. HAGOOD: I think Mr. Poe has got some remarks to
25 make, Judge, in point of a variance.

1 THE COURT: Great. Great.

2 MR. POE: Your Honor, just for housekeeping stuff, I
3 do have several exhibits that I've provided to the Government.
4 It's Defendant's Exhibits 10 through 15 that I would offer at
5 this time.

6 THE COURT: Great.

7 Any objection to those?

8 MR. FENTON: No, Your Honor.

9 THE COURT: They're all admitted into evidence.

10 (Defendant's Exhibit Nos. 10-15 received)

11 MR. POE: Your Honor, and just -- really just to kind
12 of sum all this up and just to kind of land the plane here on
13 this case -- it feels like it's going on for years now -- I
14 just -- I would draw the Court to -- or the attention of the
15 Court that Mr. Comu -- just kind of giving you an idea of who
16 he is.

17 You know, he was raised -- he was born in Turkey. He
18 was raised in a home where his father was rather abusive, both
19 verbally and physically.

20 He's the youngest of three siblings, two of which --
21 the older two have been very successful in their lives and
22 their career, but Mr. Comu struggled. He struggled
23 academically. He struggled athletically. And a result, his
24 father just didn't really seem to be proud of him. He would
25 use words like he was never going to amount to anything, he's

1 always going to be nothing. And at the age of 15 and 16, he
2 kind just of disowned him.

3 And so that kind of has a chilling effect in how you
4 perceive life whenever your own father treats you that way.
5 And so Mr. Comu's mission at that point was to try to, what I
6 think most people would do, is I'm going to try to prove him
7 wrong.

8 Unfortunately, he just didn't have the tools to be
9 able to do that. And so you get into a series of adventures.
10 And he has this entrepreneurial spirit just like his father
11 had. But in trying to be an entrepreneur -- and he did what
12 all of us do to some form or fashion in our life is you fake it
13 until you make it, right?

14 But, unfortunately, the choices that he made along
15 the line it led him to where he's got an injunction from the
16 Securities Board in Wisconsin. He's got an injunction from the
17 SEC.

18 And then he goes through a really nasty bankruptcy
19 that's very public, all of which is -- it's preventing him from
20 being where he wants to be, which is just proving that he is
21 somebody, that he is a person worthy of stature in society, not
22 that he's trying to, you know, make it rich and to live this
23 high, affluent lifestyle. It's just -- it's just to have this
24 stature to disprove what his father had told him when he was a
25 young kid.

1 And so he's always looking for his big break. And in
2 the course of that bankruptcy, he comes across this idea of
3 Black Water, right? It's infused with these minerals that can
4 help you.

5 And you look around in the news, and there's all
6 these beverage companies that are starting, and it reminds me
7 of the dot-com age, right? Where these people would start
8 these companies that had massive losses, but they had a
9 concept. They had a brand, right? And then they take that
10 brand and it either becomes an IPO where it's an initial public
11 offering and everybody becomes wealthy out of it, or it gets
12 sold to somebody else. Mark Cuban did the same thing. He
13 became a billionaire doing that at Broadcast.com. Not that it
14 has any profit. And the beverage industry is the same way.

15 You take this -- the product, you build a brand for
16 it. You might have a very small distribution network, but it
17 requires capital. And the idea is, is can I get a company like
18 Coke, can I get a company like Dr Pepper interested in it?
19 Because they've got the infrastructure. They've got the
20 ability to scale this out all across the world and make
21 billions of dollars on it. He had a concept, but, again, he
22 needed the capital.

23 And so first he starts off raising it from his
24 friends and his family and -- but it's not enough. It's not
25 enough to be able to get the celebrity endorsements that he

1 got. It's not enough to be able to get the NASCAR that's got
2 EarthWater all over on the side of it or the radio spots and to
3 get it on Amazon and get into Central Market.

4 And so he starts looking for institutional investors.
5 The problem is he's got these issues from the past, right?
6 He's going through the middle of a bankruptcy. The only way to
7 get this idea afloat is to bring in, unfortunately, people like
8 Kadish and Green that are going to charge him 40 to 50 percent
9 in order to find these investors.

10 He wasn't targeting elderly folks. I mean, the
11 Government wants to say that this is -- it's specifically
12 targeting these vulnerable victims. He was wanting investors,
13 investors that he was hopefully going to make rich one day with
14 this idea, with this product.

15 And, you know, it wasn't enough -- so first you go
16 through one round with Kadish and Green, and then he goes and
17 he finds an investment banker called Midtown Partners. He
18 starts to go through that. He thinks he's got it. He thinks
19 he's got his funding at this point to be able to do the IPO,
20 and that falls through. So now he has to go through another
21 round with Kadish and Green, and the cycle continues until he
22 literally signs an agreement with this investment bank in New
23 York City called Maxim. And he's getting off the plane or
24 getting on the plane, and he gets arrested on this indictment.

25 Now, I realize that Maxim has now later said, "well,

1 if we had known this, we never would have entered into this
2 agreement. If we would have known this, we wouldn't have
3 entered into this agreement with him."

4 But the fact of the matter is, if C.J. Comu was
5 trying to defraud investors and was just using this as a
6 personal bank, why is he even seeking out these institutional
7 guys? why is he putting his neck out on the line? Because
8 they very could easily turn and report him to the SEC or to the
9 DOJ if they thought fraud was going on. why would he do that
10 if he believed that he was running a massive scheme to defraud
11 somebody? And, of course, he didn't.

12 In fact, he believed in this product. Yes, did he do
13 some hard sales with people? Yes, because he believed in the
14 product. And the fact of the matter is, of all the things that
15 the Government has said that he's lied about, not once have
16 they alleged that he was lying about the financials of the
17 company as far as the sales go. There's hundreds of thousands
18 of dollars' worth of sales.

19 Not once -- I mean, they try to take this sideswipe
20 at him and say this product was just a prop, but the fact of
21 the matter is, it was sold in Central Market. There is Amazon
22 sales to the tune of 3- or \$400,000.00. You have investors in
23 their own reports whenever they sent it to Probation saying,
24 "Yeah, I saw it in the store, so I knew this was a legitimate
25 product."

1 And so this was not this idea that he was just trying
2 to, lack of a better -- screw these old folks out of their
3 money.

4 And so he gets in -- he's arrested or -- and then he
5 gets out on pretrial release, and he has this idea of "I
6 still -- this is such a great product here that has value not
7 only for myself but for these investors and these
8 shareholders," and he tries to get the Shields group to buy it.
9 Because what didn't come out, and it's in a transcript, is Jim
10 Shields was a big advocate for the product. He drank it all
11 the time. And so they wanted to buy it knowing the allegations
12 that were going on, but they were stopped by the Government.

13 The Government didn't try to seek out to get a
14 trustee to come in to help save this company. There's pallets
15 of this stuff that, you know, went bad, got spoiled because of
16 the fact it expired in the warehouse. They didn't do anything
17 to try to mitigate the losses to the victims, but yet they want
18 to, you know, keep raising the number, moving the goalpost
19 every time, you know, the PSR wants to come out with something
20 new.

21 And so he gets thrown in jail because of the
22 violation of his pretrial release. And his -- kind of his run
23 through the system in the last three years is kind of
24 noteworthy. Like, he -- he showed up at the revocation hearing
25 with a patch over his eye because he just had surgery to have

1 his detached retina corrected. Unfortunately, he wasn't able
2 to go to any of the follow-up visits. Unfortunately, the
3 system did not give him his eyedrops. So ultimately he's lost
4 the sight in his eye and he's not able to see.

5 And he also -- ironically, he was one of the first
6 five people in Dallas County in the jail to get COVID when
7 COVID came out. And back when no one really knew what COVID
8 was and it was kind of treated like it was the plague, they
9 took the five guys, threw them in a cell, and tossed some
10 Tylenol in there through the slot and just hoped that they
11 fended for themselves and it kind of went away. And just the
12 idea of "what was going to happen to me? Am I going to die
13 here in the dark?" was kind of traumatic for him.

14 But as -- COVID continued to, you know, hurt him,
15 because he has been sitting here waiting to be sentenced for
16 years now to the point that he's lost about 9 to 15 months'
17 worth of time that he have could have gotten for taking
18 programs with the First Step Act credit. And so he's continued
19 to be punished with it.

20 So the question now is, how do you treat this
21 62-year-old man who, you know, is here and has pled guilty to
22 23 counts of, essentially, fraud?

23 And so I gave you those press releases. And I
24 just -- these are press releases that I've gone back -- and I
25 looked through every single press release that the U.S.

1 Attorney's Office in the Northern District has done in the last
2 six years, and I found cases that were related to securities
3 fraud victims. I excluded all the healthcare fraud. I
4 excluded that stuff.

5 So here are the ones that were relevant.

6 Here you've got Exhibit Number 10. You've got James
7 VanBlaricum, B -- or V-A-N-B-L-A-R-I-C-U -- C-U-M.

8 In 2017, Judge Means sentenced him to 84 months for a
9 \$32 million oil and gas Ponzi scheme. He was 78 years old at
10 the time.

11 Exhibit Number 11 deals with Carl Battie,
12 B-A-T-T-I-E. He was 60 years old in 2016. And Judge Fitzwater
13 sentenced him to 120 months for \$11.4 million fraud that is
14 titled "A Real Estate Investment Scheme Targeting Senior
15 Citizens."

16 Exhibit 12 discusses Chris Faulkner. He was 40 years
17 old at the time. I personally know about this one. It was a
18 \$150 million oil and gas scheme that he ultimately -- the
19 Government wanted to do an 11(c)(1)(C) plea to 12 years on.
20 Judge Boyle rejected it, and they came back and did a (C) plea
21 to 180 months. That was in '21.

22 And then Exhibit Number 13 deals with Bruce Bise,
23 B-I-S-E, and Samuel Mendez, M-E-N-D-E-Z. Bise was 60 and
24 Mendez is 65. They ran a cryptocurrency business where they
25 raised \$24 million from 13,000 investors. And the press

1 release says that they just used the money all for their
2 personal expenses. Ultimately, the Government let them plead
3 to tax charges because they didn't report the \$4 and a half
4 million dollars over the two years that they had just put in
5 their pockets. And they each got 50 months.

6 You've got Exhibit Number 14 deals with Wendy Richie.
7 She was 59. And Jeffrey Richie, 55. Husband and wife. They
8 served as a third-party administrator for dozens of pension and
9 retirement funds. They literally submitted over 90
10 distribution sheets for different retirees, asking for funds to
11 be pulled out of their accounts to the tune of \$15.2 million
12 and just pocketed it, didn't tell them anything, just stole
13 their IDs and just took the money out of their retirement
14 accounts.

15 Judge Lindsay gave -- the Government allowed them to
16 plea to charges where it capped them at 12 years and 10 years
17 respectively. Judge Lindsay in 2020 gave them nine and eight
18 years.

19 And then the last one is Exhibit Number 15, deals
20 with Patrick Howard. In '21, Judge Boyle sentenced this Ponzi
21 schemer who had raised \$13 million from a hundred investors
22 where he promised 12 percent returns, issued phony account
23 statements. He assured investors that they could not under any
24 circumstances lose their investment because he had insurance to
25 offset the poor performance of his funds and his investments.

1 And they had victims testifying at sentencing, and he
2 got 60 months.

3 So you look at those cases and you look at EarthWater
4 in which you have a real product. You've got real potential.
5 You've got a defendant who is working to make this case a
6 success, whether -- he did not do things right. That's why
7 we're here. I'm not arguing about that. But he just -- he was
8 not pitching this as a product to try to just get their money
9 to go pocket it. He was pitching it to keep this company
10 afloat so that he could get it to the end game.

11 And whenever you look at all of this -- and this is a
12 less egregious set of circumstances than these other cases.
13 And that's why we believe from our sentencing memorandum that
14 a sentence in that five- to seven-year range is appropriate
15 here.

16 THE COURT: Thank you.

17 MR. HAGOOD: Judge, one other thing, if I could. I
18 wanted to just introduce you to the people that came to support
19 Mr. Comu.

20 THE COURT: Oh, that would be great. Thank you.

21 MR. HAGOOD: Would you stand up, please?

22 And if you don't mind, would you tell -- just
23 starting on the right, Ms. Lloyd. Would you tell the Judge
24 your name?

25 MS. LLOYD: My name is Jan Perry Lloyd.

1 THE REPORTER: I'm sorry?

2 MS. LLOYD: Jan Perry Lloyd.

3 MR. LLOYD: Stephen Lloyd.

4 MR. HAGOOD: And you submitted a written affidavit,
5 right, sir?

6 MR. LLOYD: I did.

7 MR. HAGOOD: Ma'am?

8 MS. GREENBURG: Kristin Greenburg.

9 MS. WHALEN: Andrea Whalen.

10 THE REPORTER: I'm sorry?

11 MS. WHALEN: Andrea Whalen.

12 MS. WOOD: Mindy Wood.

13 MR. SKELTON: John Skelton.

14 MR. HAGOOD: Mr. Skelton, you submitted a
15 declaration -- you submitted a declaration also, didn't you,
16 sir?

17 MR. SKELTON: Yes, sir.

18 MRS. COMU: Phyllis Comu, his wife.

19 THE REPORTER: Judge, I didn't get that.

20 THE COURT: You're his wife?

21 MS. POE: Phyllis Comu.

22 MRS. COMU: Yes.

23 MR. HAGOOD: Behind you?

24 NEAL: I'm Phyllis's brother, Neal (inaudible)

25 MR. HAGOOD: Sir?

1 MR. JACOBI: Robert Jacobi.

2 MR. HAGOOD: Thank you, sir.

3 I know you, Doctor.

4 DR. CHIRASE: Yeah. Norbert Chirase.

5 MR. HAGOOD: Right. Thank you, sir.

6 I just wanted the Court to see the number of people
7 here.

8 Thank you very much. Have a seat.

9 MR. POE: The only thing left, Your Honor, I would
10 have is just Mr. Comu's allocution.

11 THE COURT: Okay.

12 MR. POE: So do you want to do that now, or would you
13 like to --

14 THE COURT: Do you want to do it now or after you
15 hear from the Government?

16 MR. POE: It's your call, Your Honor. It's your
17 show.

18 THE COURT: Yeah, I understand, but I'm giving you
19 some latitude, whichever you would rather. I don't care.

20 MR. POE: I would rather hear him now, Your Honor.

21 THE COURT: Okay. Good.

22 Mr. Comu you don't have to say anything, but if you
23 would like to, now is your chance, okay?

24 (Pause)

25 THE COURT: Mr. Comu, it's okay for you to be upset.

1 This is your day. This is your opportunity. And I just -- I
2 want you to get ahold of yourself so I can hear whatever you
3 would like for me to hear, okay?

4 And, you know, it should be upsetting. I mean,
5 this -- Federal court is a difficult place to be.

6 THE DEFENDANT: Honorable Judge Kinkeade, I stand
7 before you and God to repent for my sins. What began as a
8 dream to build a global health company turned into my worst
9 nightmare.

10 My life, along with the lives of hundreds of others
11 that believed in this, have been devastated financially and
12 emotionally from this loss. This was never my intent. My
13 business was something I gave my life to and net worth, and now
14 it's all gone.

15 Earthwater was not just a company, it was my only
16 child. I dedicated my life to its success and sacrificed
17 everything I had to accomplish it.

18 I was born in Turkey, arrived in Canada as a small
19 child with my older brother and sister. My father was a
20 professional engineer and a strict disciplinarian.

21 In spite of tough times growing up and many
22 challenges, I was always told to do the right thing in life. I
23 feel I failed.

24 During my pretrial, I tried to save my company. I
25 could not watch it die. This attempt cost me my liberty.

1 Every morning when I wake up and every night when I
2 try to sleep, I ask a simple question. why? why did
3 EarthWater have to die for my sins?

4 Today I am a broken, humiliated, and destroyed
5 62-year-old man.

6 I've been held in five different jails since November
7 of 2019, been threatened, bullied, possessions stolen by
8 inmates. My own wife of over 22 years has been the recipient
9 of death threats for no reason except she's my wife.

10 If I could rewind this nightmare, I would never allow
11 for the mistakes that I made. If I can make every shareholder
12 whole again, I would do all I could now or in the future to do
13 so.

14 In closing, there are no words to express how sorry I
15 am for the pain and suffering caused by all those associated
16 with me. I've cried an ocean of tears. I have nothing left.

17 I thank you for the opportunity to address you and
18 this Court.

19 THE COURT: Thank you.

20 All right. Government?

21 MR. FENTON: Yes, Your Honor.

22 we have one victim, Mr. [REDACTED], who we would
23 like the Court to hear from.

24 THE COURT: I would love to hear from him.

25 (Pause)

1 THE COURT: Do you want to move those two bottles?
2 Or you can leave them there. whatever. I don't care.

3 (Pause)

4 THE COURT: Hi, Mr. [REDACTED]. Come on up to the podium,
5 please, sir. And let's get you sworn in.

6 Raise your right hand, please, sir.

7 (The witness was sworn)

8 THE COURT: Go ahead.

9 [REDACTED], GOVERNMENT'S WITNESS, SWORN

10 DIRECT EXAMINATION

11 BY MR. FENTON:

12 Q. Mr. [REDACTED], can you please state your name and spell it for
13 the record?

14 A. [REDACTED].

15 Q. And, sir, where do you live, and what do you do?

16 A. I live in San Diego, California, and I work for Hilton
17 Corporation.

18 Q. And, sir, you were an investor in Earthwater, right? You
19 bought Earthwater stock?

20 A. Yes, sir.

21 Q. Okay. Can you describe for the Court, for Judge Kinkeade,
22 how you first learned about Earthwater and how it was that you
23 came to buy Earthwater stock?

24 A. I learned of Earthwater through a family friend. And I
25 was actually introduced to C.J. over the phone shortly after my

1 wife of 18 years passed away at 47 years old.

2 And she had invested in Earthwater and thought that
3 it would be something that I might be interested in, so I said
4 have him call me.

5 So C.J. gives me a call and tells me all about
6 Earthwater being the new oil and --

7 THE COURT: When you say C.J., Mr. Comu?

8 THE WITNESS: Yes, sir.

9 THE COURT: Okay.

10 A. How this is an investment that will assure the financial
11 stability of not only myself but my children and my
12 grandchildren especially when the company goes public.

13 And he said, "If you would just invest a certain sum
14 of money, I will send you a certificate of 100,000 shares with
15 Earthwater. And when it goes public, that's what we're all
16 waiting for."

17 And there is one thing about that conversation that
18 I'll never forget. He said, "[REDACTED], when we're done here, I
19 want you to look up to God, and I want you tell [REDACTED] that
20 you took care of them, that you did something today that will
21 assure the economic stability of not only, again, yourself but
22 your grandkids and your own children."

23 That's exactly what I did.

24 THE COURT: How much money?

25 THE WITNESS: I gave him \$25,000.00.

1 THE COURT: Okay.

2 A. And then as time went by, I received several videos and
3 emails from Mr. Comu. One was of a huge factory where there
4 were pallets after pallets loading up this black Earthwater
5 that, again, is going to be the new oil. And I thought, okay,
6 well, you know, things are happening. This is good.

7 Then I remember one time he called me up, and he
8 goes, "I'm going on a show much like the Shark Tank." And he
9 goes, "Keep an eye on that one, because if we get an investor
10 involved from these people here, your stocks will just shoot
11 through the roof."

12 And not one thought that it was a good idea.

13 That kind of started me thinking, well, maybe I
14 wasn't thinking so clearly in my grief.

15 And then I get a call from C.J. saying, "We're going
16 public. We're going public first quarter of next year." And
17 he goes, "Hang onto your hats, because this is when it is all
18 going to begin."

19 A month went by, I believe, and then I get a call
20 from another representative from Earthwater calling me up to
21 tell me that everything is okay with my account, all my stocks
22 are secure, but he had some unfortunate news for me, that
23 another investor in Earthwater had just lost his wife in a
24 severe car accident and both of their children were in a coma
25 in the hospital. "And when that happened to him, we thought of

1 you, [REDACTED], because if there's anyone out there that
2 understands exactly what this man is going through, you might
3 be able to help him out. See, we are selling his shares now at
4 a severe discount, much less than what he had paid for them,
5 somewhere around where you paid. So if you would just simply
6 invest another \$25,000.00, we'll give you another 100,000
7 shares. And in a couple of months when this thing goes big and
8 it takes off, you will never have to worry about money again."

9 And I thought I was taking care of my children. They
10 had just lost their mother. And then it never went public
11 and --

12 THE COURT: So you gave him another 25?

13 THE WITNESS: Yes, sir.

14 Ask that question again? I'm sorry.

15 THE COURT: You gave them another --

16 THE WITNESS: No, sir. No. I actually was much more
17 clear-minded at that point.

18 THE COURT: So you never put more than --

19 THE WITNESS: That was it. Something inside me said
20 no, don't do this. If this thing is going to go public like
21 everyone has promised in the next 90 days, I'll be able to help
22 him.

23 THE COURT: So you never put another 25 --

24 THE WITNESS: No, sir.

25 THE COURT: -- or another dime in it?

1 THE WITNESS: No, sir.

2 THE COURT: Okay.

3 THE WITNESS: It was the initial investment.

4 THE COURT: Okay. You just wanted me to know how
5 they were trying to get another 25 out of you?

6 THE WITNESS: Yes, sir.

7 THE COURT: Okay. I get it.

8 BY MR. FENTON:

9 Q. And, Mr. [REDACTED], can I ask you, was there a time when you
10 reached out to Mr. Comu to ask him about the status of the IPO
11 that he had been talking about?

12 A. Yes. As a matter of fact, when I heard that they were
13 trying to sell this person's shares, I thought, well, since
14 they're worth a lot more now than when I had purchased them,
15 that maybe I could sell a few.

16 And when I called C.J. to tell him that that's what I
17 was thinking about doing, he was livid. He was just, "Don't
18 you do that," you know. I mean, he was just -- he came off at
19 me like it was severe. So I just laid low, and I just -- he
20 goes, "Just be patient. It's going to happen."

21 That's -- and then obviously nothing ever went
22 public.

23 Q. And did you have any other conversations with Mr. Comu,
24 any conversations that ended with him hanging up on you?

25 A. Well, that was one that he hung up on me. I can't

1 remember any additional.

2 Q. Okay.

3 THE COURT: I'm sorry you lost your money.

4 THE WITNESS: Me, too.

5 THE COURT: I'm sorry more you lost your wife.

6 THE WITNESS: Yes, sir. You know, there is some --

7 THE COURT: I get it.

8 THE WITNESS: -- cuts in life that you get --

9 THE COURT: I get it.

10 THE WITNESS: -- that will heal with a scar.

11 THE COURT: I get it.

12 THE WITNESS: But underneath maybe not so much.

13 THE COURT: My brother lost his wife a couple of
14 years ago, and it's really, you know -- watching him go through
15 that, really, really, really hard. And I'm so sorry.

16 THE WITNESS: Thank you.

17 THE COURT: Young man -- she was a young woman to
18 have lost her.

19 THE WITNESS: Yes, sir.

20 THE COURT: So I can't fix any of this, really.

21 THE WITNESS: I know.

22 THE COURT: But I'm happy to hear you, and I'm sorry
23 that you had to travel all this way and be taken advantage of,
24 okay?

25 THE WITNESS: Yes, sir.

1 THE COURT: Take care of those kids.

2 THE WITNESS: All the time.

3 THE COURT: That's something good.

4 THE WITNESS: The best I can.

5 THE COURT: That's something good to invest in.

6 THE WITNESS: I've got two grandkids now.

7 THE COURT: Oh, well, there you go. That's great.

8 THE WITNESS: Yeah.

9 THE COURT: Yeah.

10 Thank you, sir, for being here.

11 THE WITNESS: Absolutely.

12 THE COURT: All right. Do you have any questions,
13 defense?

14 MR. POE: No, Your Honor.

15 THE COURT: All right. Thank you for being here,
16 sir.

17 (Pause)

18 THE COURT: All right. Mr. Fenton?

19 MR. FENTON: Your Honor, would this be an appropriate
20 time to speak on the sentence?

21 THE COURT: Yes.

22 MR. FENTON: Okay.

23 THE COURT: I have a question. So y'all are really
24 after these people for the 10 percent lie, correct? That's
25 what all this is about, is what they lied about on how much

1 they were going to pay people and it was just a flat-out just
2 big-time lie?

3 You don't -- you're not taking the position formally
4 about whether the product was quality or not. Yes or no?

5 MR. FENTON: That -- that's correct, Your Honor.

6 THE COURT: Okay.

7 MR. FENTON: That's correct.

8 THE COURT: All right. Then let's concentrate on
9 what that is, which is telling the big lie and where we are
10 with regard to that. I understand that issue and how that
11 played into this.

12 why didn't you let them try to sell it?

13 MR. FENTON: Your Honor, the fraud -- the company was
14 infected by the fraud.

15 THE COURT: The bottles weren't infected.

16 MR. FENTON: Right. The bottles were not infected.
17 The efforts -- the subsequent efforts to sell the company were
18 in violation of Mr. Comu's conditions of release. He was not
19 supposed to go --

20 THE COURT: Yeah, I agree with that.

21 MR. FENTON: -- and do that, Your Honor. And --

22 THE COURT: But let's assume you came to me and you
23 said, "Judge, how about you appoint a receiver?" Could we have
24 cleaned this thing up and had a receiver try to sell it or do
25 something with it? I'm just -- could have tried to get some of

1 these people their money, some of the money, anyway, or, you
2 know, whatever if this was something real.

3 I'm not sure I'm ever going to drink anything that's
4 got black in it. I don't care how good it is or whether
5 Shaquille O'Neal or anybody else tells me I ought to drink it.
6 I don't think I could -- I don't think I can do it, but
7 apparently other people can.

8 And I just don't -- I don't understand that when the
9 Government takes such a hard line when, you know, I've seen
10 these things in the past and we -- I just get a receiver in
11 here and we start scrambling around.

12 Actually, I think Mr. Comu should have gotten his
13 lawyers to do that, say, "Hey, let's get a receiver appointed.
14 I'm not the guy." You know, certainly he wasn't the one to be
15 getting the money, and he wasn't the one to be doing the
16 selling. I get all that, and I get your point about infected.

17 But if we had to do it over, couldn't we have done
18 something like that?

19 MR. FENTON: Your Honor, the fraud took place at the
20 time when Mr. Comu took their money, because -- took the
21 victims' money, because the fraud was about how he would use
22 that money.

23 And the Government's position is that Mr. Comu and
24 his co-conspirators were using the money, an overwhelming
25 majority of the money, for their own personal benefit.

1 THE COURT: I get that.

2 MR. FENTON: While they -- while it is true that they
3 were bottling some product --

4 THE COURT: What if they had been doing Cadillacs?
5 We wouldn't have just thrown them away. We would have sold
6 them, wouldn't we?

7 MR. FENTON: But the bottled water was just being
8 used as props. There was not -- as far as the Government could
9 tell in the course of its investigation --

10 THE COURT: You're not prosecuting them for bad
11 water. That's different. You tell me you're doing that,
12 that's different. If this was not a real product, didn't do
13 real stuff -- Dr. Chirase says it did. But you're not taking
14 that position. That's my struggle with this, is that, you
15 know, Government, "Oh, it was just a prop." But you didn't
16 indict them for that. We didn't try them for that. And he
17 hasn't been in jail for three years for that.

18 MR. FENTON: No. We tried him for taking people's
19 money and just putting it directly into his pocket.

20 THE COURT: Yeah, and I'm going to punish him for
21 that. I don't have any trouble. I just don't understand why
22 we didn't try to get some of these people's money back. That's
23 just -- I've never been a prosecutor. You have a hard job.
24 I'm not trying to second-guess you. I'm really not. And I'm
25 not trying to whack you because you're a Washington lawyer.

1 I'm not. I promise.

2 There are -- I'm sure you're one of the good ones.
3 I've got -- I was going to have a bunch of them in here
4 tomorrow on kind of an odd deal. But, anyway -- a DOJ, he's
5 got COVID and can't come now.

6 But help me understand that if you were in my shoes.

7 MR. FENTON: Yes, Your Honor.

8 THE COURT: Go ahead.

9 MR. FENTON: The CEO, the COO, the CFO, all the
10 people who were selling the stock, all of these people were
11 indicted for fraud. This was essentially a fraudulent stock
12 sale operation. And at the center of this fraudulent stock
13 sale operation was an individual, Mr. Comu, who for 30 years
14 had a history of fraud and concealed that fraud. He used
15 victim money to conceal that fraud from everybody, including
16 the people who he subsequently tried to do business with after
17 he was indicted.

18 Mr. Jenson, the individual, the elderly gentleman who
19 he had called on the phone to try to get \$500,000.00 and hide
20 it from the Government.

21 The Shields group, who he owed money to. And if you
22 look at the term sheet that the Shields group had negotiated,
23 what they were going to do was sell more stock to these poor
24 people who had already been victimized, and they were going to
25 make arrangements for the payment of past-due invoices for

1 legal services that the Shields group had provided to Mr. Comu
2 and that Mr. Comu had not paid.

3 when we spoke to Nick Mysore, the second individual
4 who Mr. Comu tried to do the deal with, he had no idea about
5 all -- about Mr. Comu's background --

6 THE COURT: All the shenanigans?

7 MR. FENTON: -- the bankruptcies --

8 THE COURT: I get it.

9 MR. FENTON: -- about the fraud, you know, and all
10 this other stuff. All of these deals that were going to happen
11 were all premised on frauds.

12 And the thing that's really important to remember is
13 the product itself is not the value here. The value that
14 Mr. Comu is selling, if you listen to the testimony from all of
15 the victims and the victim impact statements -- when you heard
16 from Mr. [REDACTED] and other folks, it is the promise of the IPO.
17 It's the promise of the buyout from Amazon, from Coca-Cola,
18 from these other companies. That's the payout. That's the
19 high rate of return.

20 The bottles, the reason the Government is not
21 acting -- we don't advise on buying and selling companies. We
22 don't advise on safety, whether or not this is a safe product
23 or not. But at its heart, what Mr. Comu was selling was not
24 that water, it was the promise of the IPO, the promise of the
25 future acquisition.

1 The reason --

2 THE COURT: You made a decision it was worthless.

3 MR. FENTON: We -- but we didn't make that decision.

4 THE COURT: Yeah, you did. You didn't -- you didn't
5 ask me to have a receiver. You made a decision that stuff in
6 those bottles didn't have enough value separate from this lie
7 about IPO and all that stuff, pure bunk, that I could have
8 appointed a receiver, some sharp guy like you that could have
9 handled that and maybe sold the stuff for a million bucks or
10 \$500,000.00 or something.

11 I mean, you just -- you got -- I don't know. I don't
12 understand. You tell me you never get receivers appointed in
13 these kind of cases?

14 MR. FENTON: In some cases decisions are made to
15 appoint receivers. That's true. But other steps could have
16 been taken as well. For example, they could have petitioned
17 for bankruptcy under Chapter 7 or Chapter 11. None of that
18 action was taken, and it's because at the end of the day this
19 was just a fraudulent stock sale operation. Yes, they bottled
20 some water. But part of the reason why they didn't have this
21 big legitimate ongoing operation is because they didn't use the
22 money --

23 THE COURT: If you thought it had any value, you
24 would have done that, wouldn't you?

25 MR. FENTON: That could have been something that

1 could have been discussed.

2 THE COURT: I didn't ask that. Answer it the way I
3 asked is. What did I ask?

4 If it had had a bunch of value, you would have
5 thought in your own mind, "Hey, Judge, I would very likely have
6 asked for a receivership of some sort."

7 MR. FENTON: Yes, Your Honor. That's a possibility.

8 THE COURT: That's a coulda, woulda, shoulda answer.
9 That's not an answer.

10 wouldn't you have done that?

11 MR. FENTON: Yes, Your Honor.

12 THE COURT: Okay. I'm not -- I'm not trying to trap
13 you. I'm just trying to say -- I'm as upset with these people
14 as you are. I'm not a prosecutor. But I just, you know -- I
15 don't understand.

16 I think if I had known, I would have done it on my
17 own. I mean, I would have brought you in here and said,
18 "Mr. Fenton, why don't we get a receiver here?" and you could
19 have made these arguments. I might have been convinced,
20 "Judge, this doesn't have enough value. We won't get enough
21 out of this."

22 I think maybe I -- you -- I might have bought your
23 argument. But, anyway, enough about that.

24 You want me to give this guy a sentence between --
25 I've got your memo here. You don't want me to give him the 440

1 years that the guidelines say, correct?

2 MR. FENTON: No, Your Honor. No, the Government is
3 asking for a sentence -- the guidelines range is life. The
4 Government is asking for a sentence of 15 to 17 years. 180 to
5 204 months.

6 THE COURT: I've got the statute, zero to 20; is that
7 right?

8 MR. FENTON: That's correct.

9 THE COURT: Counts One to Twenty-One?

10 MR. FENTON: That's correct.

11 THE COURT: So I can't give him more than that.

12 MR. FENTON: That's right. And the Government is not
13 asking for that. The Government is asking for --

14 THE COURT: Well, it wouldn't matter if you did.

15 MR. FENTON: Right.

16 THE COURT: I don't think I can -- I don't think I
17 can do it.

18 Okay. I get it.

19 All right. And what do you want me to do again?

20 Let's go over it one more time.

21 MR. FENTON: The Government is asking for a sentence
22 somewhere between 15 and 17 years.

23 THE COURT: And they're asking me to give him --

24 MR. POE: Five to seven.

25 THE COURT: Okay.

1 MR. FENTON: And as the Court knows, Your Honor has
2 already sentenced three defendants in this case.

3 THE COURT: I sure have.

4 MR. FENTON: Two of whom to six years and one to two
5 years.

6 THE COURT: Oh, that's right. Okay.

7 MR. FENTON: And the one final point I just want
8 to -- I would like to raise with the Court is that, you know,
9 the Government believes that this is a truly remarkable case in
10 a couple of different ways, one of which is Mr. Comu's lengthy
11 history of committing fraud. The second is the cruelty with
12 which he treated the victims. And then the third is really
13 with respect to the relentless efforts to continue the fraud
14 after he was indicted.

15 And I think that it's rare that you see a case where
16 you have a defendant giving you a candid insight to their
17 approach, not only to the world but specifically to pleading
18 guilty for a fraud just like this.

19 And the Government --

20 THE COURT: And keep doing it after -- and, you
21 know -- even while you're out there free, running around?
22 Granted, you're on pretrial release.

23 MR. FENTON: Or even when you're in jail on a
24 recorded line --

25 THE COURT: Even in jail.

1 MR. FENTON: -- you know is recorded.

2 THE COURT: Yeah, that's true.

3 MR. FENTON: But the Government provided Your Honor
4 Exhibit 4, which was a recorded telephone conversation between
5 Mr. Comu and Mr. Fleming where Mr. Fleming and a co-conspirator
6 talked about the fact that he had recently pled guilty in a
7 case involving a similar fraud, and Mr. Comu's response was,
8 "Listen, man, I'll agree to anything. Just plead insanity.
9 Plead poverty. That's what I'll do. That's what I do. I'll
10 agree to \$100 million judgment, and you'll never get it, but
11 I'll agree to it."

12 And that is essentially what Mr. Comu has done here.
13 He pled guilty to this fraud which involved lying to people to
14 take their money, putting it in his pocket, and then coming up
15 with all these reasons for why what he pled guilty to didn't
16 matter.

17 And the language that he uses just shows the Court
18 that this is just an effort -- this is more fraud.

19 He characterizes it as cutting corners. Cutting
20 corners, that's what he says, not when he got up in the
21 allocution, but in the letter that he wrote to Your Honor that
22 was included in the PSR. That's how Mr. Comu -- after all of
23 this, that's how Mr. Comu views this. He cut corners.

24 He committed a horrible fraud. The whole premise was
25 that he was going to take this money from these individuals,

1 invest it in the company, grow something big, and take the
2 company public, and he didn't do that. He put it in his
3 pocket, and he divvied it up with the co-conspirators.

4 So we would posit, Your Honor, the fact that you have
5 this candid insight into how he would approach guilty pleas and
6 that his consistent -- that his actions were exactly consistent
7 with that conversation that we provided to Your Honor in
8 Exhibit 4.

9 THE COURT: I'm assuming your argument wouldn't be as
10 emphatic if, one, let's say he hadn't done that while he was in
11 jail; and, two, he hadn't gotten -- hadn't done what he did
12 while he was on pretrial release.

13 MR. FENTON: I think that's correct, Your Honor. I
14 think that's correct.

15 The final point I want to make is that it's important
16 with respect to restitution and also with respect to the loss
17 amount to avoid any unwarranted sentencing disparities.

18 And in the previous -- with respect to the previous
19 individual that you sentenced, the loss amount for Mr. Kadish
20 and Mr. Green was \$12,422,311.61. And the Government filed --

21 THE COURT: Is it 422 or 427?

22 MR. FENTON: 422.

23 THE COURT: Okay.

24 MR. FENTON: I'm sorry, Your Honor. 427.

25 THE COURT: I've got it both ways on my notes.

1 MR. FENTON: I'm sorry, Your Honor. My apologies.

2 THE COURT: No, I'm not fussing at you. I had it
3 wrong.

4 MR. FENTON: And we believe that it's important
5 that that --

6 THE COURT: Stop.

7 PROBATION OFFICER: It is 427, Your Honor.

8 THE COURT: Thank you. Thank you.

9 MR. FENTON: And we believe it's important to avoid
10 unwarranted sentencing disparity particularly since Mr. Comu is
11 the leader of this fraud and --

12 THE COURT: That the restitution needs to be that
13 amount?

14 MR. FENTON: Right.

15 THE COURT: I understand.

16 MR. FENTON: Thank you, Your Honor.

17 THE CLERK: It is 422 for the first one. They're
18 going to amend that.

19 THE COURT: Is it 427 or 422?

20 THE CLERK: 422 on one and 427 on the other.

21 THE COURT: Which one is right?

22 THE CLERK: 427 that was figured out last time.

23 THE COURT: Well, then, we'll figure that one out.

24 MR. HAGOOD: Judge, could I say one thing before
25 the --

1 THE COURT: Sure, you can.

2 MR. HAGOOD: Thank you, Judge.

3 The Shields group would have been tantamount to a
4 receiver had they been permitted to move forward with the
5 Government. They're not involved in the fraud. There's no
6 allegation of them being involved in the fraud. They -- they
7 wanted to take this product to market and make a go of it, and
8 so that's what the shields -- that was our thinking with
9 Gibson, that the Shields group was tantamount to receiver. But
10 when we hear the word "co-conspirator" coming our way, that
11 scared the Shields group off, and we couldn't find anybody else
12 that would volunteer to take on that mission.

13 So I just wanted the Court to know we did give that
14 some consideration and thought, but the co-conspirator word is
15 a scary word for most human beings, Your Honor.

16 THE COURT: I don't know any human beings that it
17 wouldn't be scary for. I mean -- but, anyway, I get it.

18 I've had that discussion with Mr. Fenton. He and I
19 have had that long discussion here somewhere. You know where I
20 am.

21 Any other argument you want to make?

22 MR. POE: Just, Your Honor, I want to point out
23 that -- I don't want to insult the Court. I don't want to
24 insult the victims here. But the idea that, you know, you've
25 got these individuals, these investors, these victims that sign

1 these forms saying that they're an accredited investor, they're
2 signing saying that they've got five times their investment
3 stored up at home, that this is not going to break them, that
4 they have over \$1 million in net worth, and now for them to
5 say, like, "I'm a victim here because I didn't read the
6 paperwork" -- well, if they didn't read the paperwork that they
7 signed, how do we know they read the paperwork that has the lie
8 in it, right, the PPM?

9 So that's something that's -- an issue that I've been
10 struggling with through the course of this case.

11 But on the other side is if this is successful, if
12 the Shields group takes this and does well with it, if Maxim
13 does an IPO with this, if Midtown Partners had done an IPO with
14 this, if Comu had done well on Shark Tank, right, and got Mark
15 Cuban or somebody else to invest in this and it had gone great,
16 nobody would have cared that he was paying 40 to 50 percent
17 commissions on this money. Everyone would have been --

18 THE COURT: I would have cared if I were an investor.
19 I guarantee you, I would have cared. You can't say people
20 wouldn't have cared.

21 MR. POE: Well, it's a -- it's a -- I --

22 THE COURT: You rip me off -- you rip me off a little
23 bit and lie to me and I'm okay with it if you make me a lot of
24 money, that ain't Ed Kinkeade, I can tell you right now.

25 MR. POE: Well, and I appreciate that. But I think

1 that there might be a whole lot of people that would just get
2 the check and say --

3 THE COURT: Yeah, I agree there might be some, but
4 there's other people going, "Wait a minute."

5 MR. POE: And so at the end of the day, the ends did
6 not justify the means, right, of what he did. And we're --

7 THE COURT: It doesn't.

8 MR. POE: But I would also point out that there's no
9 evidence, though, of the investments that Mr. Comu brought in
10 personally that there was ever any commission that was paid on
11 it at all, even a 10 percent commission. I mean, otherwise you
12 would hear the Government, you know, screaming from the
13 rooftops on that, that that money went into his pocket, into
14 some shell corporation, and that's not the case. So I just --

15 THE COURT: No. But there was a whole lot more paid
16 than 10 percent, and that's what he pled guilty to. We can't
17 go back on it.

18 I get what you're saying is, yeah, they sign those
19 and so -- you know, whatever.

20 Anything else from the Government?

21 MR. FENTON: No, Your Honor.

22 THE COURT: All right. Considering the guidelines --

23 First of all, I'm going to overrule your objections
24 to the presentence report. And I adopt the findings of
25 Probation Department as the findings of the Court.

1 I will take some of this into consideration with
2 regard to -- because the guidelines are so out of whack in this
3 particular case.

4 Mr. Poe, I do appreciate where my learned colleagues
5 have sentenced people with some similar -- so, you know, I do
6 take that into consideration with regard to what's an
7 appropriate sentence and what's not an appropriate sentence.

8 And so -- excuse me. I have got more stuff on my
9 desk that I can handle.

10 So considering the guidelines and the factors of
11 3553(a) and making sure that I'm balancing these sentences with
12 the other sentences I've given with other people I've sentenced
13 over my 40 years of doing this, of what I think is an
14 appropriate sentence, and considering Booker and what I think
15 is fair, but using the guidelines to help me stay within a
16 range -- the guidelines, no offense, in this case aren't very
17 helpful. They're just not. And you can see that from where
18 other judges have struggled with this, and that's -- you know,
19 that's not unusual.

20 But it is the -- and it's offense level 43, criminal
21 history category I.

22 But taking into account all the things that I've
23 said, it is the judgment of the Court you be sentenced to the
24 custody of the United States Bureau of Prisons for a term of
25 120 months.

1 I'm going to give you credit for the time you've
2 served. That's on both -- on all counts, because I think
3 that's still within the counts of Twenty-Two and Twenty-Three,
4 but One through Twenty-One, all of them.

5 You want me to recommend Seagoville?

6 MR. HAGOOD: Yes, Your Honor, please.

7 THE COURT: I do. I do recommend Seagoville.

8 And I'm going to give him credit, obviously, for all
9 that time. I've got November 6, 2019, but if I'm wrong, let me
10 know.

11 He'll need to -- let me go over that. He'll need to
12 be on supervised release for a period of One through
13 Twenty-Two -- I don't have Twenty-Three -- I think it's one to
14 three years. For a period of three years.

15 And as conditions of that supervised release -- just
16 a second.

17 (Pause)

18 THE COURT: Oh, he's got to pay \$2,300.00 in special
19 assessments. That's \$100.00 per count. That's required by
20 law.

21 I'm not going to order a fine, because if you are
22 ever going to pay anything back, I would want you to pay it to
23 these people.

24 And you've got to pay the restitution of
25 \$12,427,311.61 to the list of victims. You've agreed to at

1 least \$9 million of that, and I added the other. And that's
2 going to be jointly and severally that you will need to pay
3 that with John Price, Harley Barnes, Richard Kadish, Richard
4 Green, Suzanne Gagnier, Joe Duchinsky, Joseph Duplain, and
5 Russell Filippo, and Donald Rothman.

6 Payable to the United States District Clerk, 1100
7 Commerce Street, Room 1452, Dallas 75242, payable immediately.
8 Any unpaid balance shall be payable during incarceration and
9 disbursed to the victims identified on the list, and it will be
10 pro rata.

11 If on commencement of your term of supervised release
12 any part of the restitution remains unpaid, you shall make
13 payments on that unpaid balance in monthly installments of not
14 less than 10 percent of the gross monthly income or at a rate
15 of not less than \$50.00 a month, whichever is greater.

16 And you shall begin payment no later than 60 days
17 after you're released from confinement and continue each month
18 thereafter until the balance is paid in full.

19 In addition, at least 50 percent of the receipts from
20 gifts, tax refunds, inheritances, bonuses, lawsuit awards, any
21 other receipt of money shall be paid toward the unpaid balance
22 within 15 days of receipt.

23 This payment plan shall not affect the ability of the
24 United States to immediately collect payment in full through
25 garnishment, Treasury Offset Program, the Inmate Financial

1 Responsibility Program, Federal Debt Collection Procedures Act
2 of 1990, any other means available under federal or state law.

3 Interest on the unpaid balance is waived.

4 Let's see.

5 Oh, and I'm dismissing the original indictment.

6 That's what you want me to do?

7 MR. FENTON: Yes, Your Honor.

8 THE COURT: I do dismiss that.

9 Is there -- oh, I adopt the terms of supervision set
10 forth in Miscellaneous Order Number 64 outlined in part G of
11 the presentence report except as modified or supplemented by
12 any facts set forth in the addendum and any facts found by the
13 Court today during this sentencing hearing. And you shall
14 comply with those conditions during the term of supervision.

15 I think that's -- I think that's it. I think this
16 meets the goals of punishment and deterrence. And, you know, I
17 am considering how you acted on pretrial release. I'm
18 considering what you -- this tape recording while you were in
19 jail. I considered all of that. And I considered where my
20 colleagues had sentenced individuals that did similar things
21 with similar results.

22 So I think that's it.

23 Anything else?

24 MR. HAGOOD: No, Your Honor.

25 THE COURT: Anything from the Government?

1 MR. FENTON: No, Your Honor.

2 THE COURT: All right. Thank y'all.

3 MR. HAGOOD: Are we excused, Judge?

4 THE COURT: You are excused.

5 MR. HAGOOD: Thank you, Your Honor.

6 THE COURT: Thank y'all.

7 (Hearing adjourned)

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1	INDEX				
2	Court's ruling.....				85
3		<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Further</u>
4				<u>Recross</u>	<u>Redirect</u>
5	<u>WITNESSES FOR THE DEFENDANT</u>				
6	NORBERT CHIRASE	36			
7	BRIAN SHIELDS	45			
8		<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Further</u>
9				<u>Recross</u>	<u>Redirect</u>
10	<u>WITNESS FOR THE GOVERNMENT</u>				
11	██████████	63			
12					
13	<u>DEFENDANT'S EXHIBITS</u>				<u>Received</u>
14	1	Charise resume			37
15	2	Organic Registration Review Letter			39
16	3	Washington State Department of Agriculture			39
17		Material Registration Certificate			
18	4	Press Release			43
19	5	Photograph			43
20	6	GTX Product Purchases by Companies			41
21	7	Email from J. Shields to C. Fenton			47
22	8	Sworn Declaration of Stephen Lloyd			48
23	9	Sworn Declaration of John Skelton			48
24	10	Department of Justice Press Release - vanBlaricum			49
25	11	Department of Justice Press Release - Battie			49

1	12	Department of Justice Press Release - Faulkner	49
2	13	Department of Justice Press Release - Bise and Mendez	49
3	14	Department of Justice Press Release - Richie	49
4	15	Department of Justice Press Release - Howard	49
5	16	"Actual" v. Stated Loss	10
6	17	Ward Capital - Declaration of Victim Losses	10
7			
8			
9			
10			
11			
12			
13			
14			
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16			
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1 I, TODD ANDERSON, United States Court Reporter for the
2 United States District Court in and for the Northern District
3 of Texas, Dallas Division, hereby certify that the above and
4 foregoing contains a true and correct transcription of the
5 proceedings in the above entitled and numbered cause.

6 WITNESS MY HAND on this 22nd day of January, 2023.

7
8
9 /s/Todd Anderson

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